

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

MARSHALL SMITH, BRANDON
HERMAN, CHAD PATERSON,
JEFFERY ROBERTS, MICHAEL
WILL, SUSAN WINSTEAD, ROBERT
BOHANNON, HOLLY
BUCKINGHAM, RICHARD
MORELLO, JR., ROBERT HARRIS,
AMANDA LARISCY, and CHARLES
NEWMAN, individually and on behalf of
all similarly situated persons,

Plaintiff,

v.

COMPLYRIGHT, INC., a Minnesota
corporation,

Defendant.

Civil Action No. 1:18-cv-4990

CLASS ACTION

Jury Trial Demanded

Hon. Edmond E. Chang

MOTION TO RECONSIDER/RESET INITIAL DISCOVERY DEADLINES

Defendant ComplyRight Inc. (“ComplyRight”), by and through its undersigned counsel, respectfully requests that the Court reconsider and reset discovery deadlines consistent with the Mandatory Initial Discovery Pilot Project Standing Order that went into effect on December 1, 2018 (the “Amended Standing Order”). In support of this motion, ComplyRight states as follows:

1. On April 27, 2017, the Hon. Rubén Castillo entered General Order 17-0005 which implemented the Mandatory Initial Discovery Pilot (“MIDP”) program in the Northern District of Illinois.

2. The initial MIDP Standing Order (“Initial Standing Order”) applied to cases filed on or after June 1, 2017¹ and required, *inter alia*, that parties file Answers within the time set forth in Rule 12(a)(1)-(3) even if the parties had filed or intended to file a dispositive motion; required parties to serve initial discovery responses no later than 30 days after the first pleading; and required parties to produce the ESI identified in their initial discovery responses within 40 days of serving the initial discovery responses.

3. On September 4, 2018, this Court entered an order following a status hearing which set deadlines for the filing of Plaintiffs’ Consolidated Amended Complaint (September 10, 2018), ComplyRight’s Answer to the Consolidated Amended Complaint (October 10, 2018), and set the following initial discovery disclosure deadlines consistent with the MIDP program and the Initial Standing Order: initial disclosures due November 11, 2018; written discovery requests issued no later than December 3, 2018; disclosure of ESI discovery by December 24, 2018; and setting a fact discovery deadline of May 31, 2019. [Dkt. 025]²

4. On October 24, 2018, ComplyRight filed a Motion to Dismiss Consolidated Amended Class Action Complaint (“Motion to Dismiss”) [Dkt. 041]; Motion to Strike Class Allegations (“Motion to Strike”) [Dkt. 043]; and its Answer to the Consolidated Amended Class Action Complaint [Dkt. 038] as required by the MIDP program and Initial Standing Order.

¹The Initial Order also excluded certain classes of cases from the MIDP program, such as cases exempted by Rule 26 or cases transferred by the Judicial Panel on Multidistrict Litigation (“JPML”). This case was the subject of a motion to transfer this action before the JPML [Dkt. 14]; the motion was withdrawn after plaintiffs agreed to file a Consolidated Amended Complaint in this case. [Dkt. 25]

² On November 12, 2018 this Court granted a joint motion to extend initial discovery and ESI disclosure deadlines, with initial disclosures due by November 20, 2018 and ESI due by December 31, 2018. [Dkt. 50]

5. The motions are currently pending with an upcoming due date for the reply briefs in support of the Motion to Dismiss and Motion to Strike set for December 10, 2018. [Dkt. 047]³ No date is currently set for hearing on the motions.

6. The parties have complied with all discovery deadlines to date.

7. On November 28, 2018, U.S. Courts sent an email (the “Email”) to inform practitioners that the MIDP program is amended effective December 1, 2018. According to the Email and the Amended Standing Order: “answers need not be filed while a Rule 12 motion is pending. As a result, answers no longer will be required – and the MIDP response period will not be triggered – while a motion is pending under Rule 12(b)(6).” (*See* Email attached as **Ex. A**). The Email explained that the “District is making this change in response to comments suggesting that the early-answer requirement of the MIDP imposed unnecessary costs on parties who ultimately succeeded on Rule 12 motions.” *See* **Ex. A**.

8. While no date has been set for hearing of ComplyRight’s motions, ComplyRight believes it will prevail on the legal challenges to Plaintiffs’ Consolidated Amended Class Action Complaint.

9. Proceeding with the initial expedited discovery deadlines as required by the Initial Standing Order and originally set by the September 4, 2018 Order [Dkt. 025] (and subsequent amendments [Dkt. 050]) has already resulted in costs to ComplyRight that it would not have incurred at this stage of the litigation in the absence of the MIDP program and Initial Standing Order because the Federal Rules of Civil Procedure typically do not require an Answer to be filed until Rule 12 motions have been decided.

³ On September 24, 2018, ComplyRight filed an Unopposed Motion to Answer, Move or Otherwise Respond to the Consolidated Amended Class Action Complaint that was filed on September 10, 2018 [Dkt. 032], which was granted by the Court [Dkt. 035].

10. ComplyRight will likely continue to experience unnecessary defense costs in connection with the expedited initial discovery disclosure deadlines of the MIDP program and Initial Standing Order. The unnecessary defense costs likely to result under the expedited initial discovery disclosure deadline will be even more pronounced if ComplyRight prevails, even in part, on the Motions to Dismiss and Strike.

11. ComplyRight requests that the initial discovery deadline order of September 4, 2018 [Dkt. 025] (along with the amendments thereto, *e.g.* [Dkt. 050]) which set the timeframe for initial discovery disclosures based on the Initial Standing Order be modified and/or vacated in part with respect to the initial discovery disclosure deadlines that the Court set based on the Initial Standing Order.

12. ComplyRight requests that this putative class action proceed under the initial discovery disclosure requirements of the Amended Standing Order as if ComplyRight had not filed its Answer, and that discovery is delayed/stayed consistent with the MIDP program and Amended Standing Order, effective December 1, 2018, pending resolution of ComplyRight's Rule 12 motions.

13. This request is consistent with the spirit and purpose of the Amended Standing Order that went into effect December 1, 2018.

14. This request is not made for purposes of delay or prejudice.

15. Counsel for ComplyRight conferred with counsel for Plaintiffs, and Plaintiffs oppose this motion.

16. WHEREFORE, ComplyRight, Inc. respectfully requests that this Honorable Court reconsider and amend and/or vacate the initial discovery deadlines imposed under the Initial Standing Order of the MIDP program [Dkts. 25, 50]; implement and proceed with discovery

deadlines as contemplated by the Amended Standing Order of the MIDP program as if ComplyRight had not filed its Answer, including a stay of discovery; and provide any additional or supplemental relief as may be just and equitable.

Dated: December 10, 2018

TROUTMAN SANDERS LLP

By: /s/ Daniel R. Waltz

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*Attorney for Defendant
ComplyRight, Inc.*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on December 10, 2018, the foregoing ***Motion to Reconsider/Reset Initial Discovery Deadlines*** was served upon all counsel of record via the Court's electronic case filing system pursuant to Local Rule 5.9, and is available for viewing and downloading on the Northern District's PACER system.

/s/ Daniel R. Waltz
Daniel R. Waltz

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